IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 2442 of 2007()

AGAINST THE ORDER DATED 19/07/2007 IN CMP 683/07 IN ST.2864/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD

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PETITIONER: ACCUSED NO.2

G.MOHANKUMAR,
FORMER SECRETARY,
PACHALLOOR CO-OPERATIVE SOCIETY,
T.C.65/1954, KUZHIVILAVEEDU,
THIRUVALLOM (P.O.),
THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAJESH KANNAN
SRI.N.HARI KUMAR

RESPONDENTS:

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1. G.SREEKUMAR, "MAKAM" CHANDRAMANGALAM,
ANAD (P.O.) THIRUVANANTHAPURAM.

2. P.J.KOMALAN,
FORMER PRESIDENT, PACHALLOOR CO-OPERATIVE SOCIETY,
REVATHI, NOORANI, PACHALLOOR P.O,
THIRUVANANTHAPURAM.

3. STATE OF KERALA
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 2442 OF 2007

Dated this the 2nd day of August, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the Negotiable Instruments Act. It is alleged that he, in his capacity as Secretary of a Co-operative Society, had signed the cheque along with the 1st accused – the President of the Society. Notice of demand did not evoke any response. Trial is in progress. The matter now stands posted for final hearing and disposal. The petitioner, at the defence stage, filed an application that the cheque may be sent to the expert for examination and report. The petitioner has a contention that the signature in the cheque is not that of the petitioner. A contention is urged before me that the 1st accused/the President must have forged the signature of the petitioner in the cheque. The petitioner therefore wanted the cheque to be sent to the expert for comparison and examination.

2. This petition was opposed. The learned Magistrate, by the impugned order, a copy of which is produced as Annexure-A3, came to the conclusion that forwarding of the cheque is not necessary in the circumstances referred to in the order. In these circumstances, the petition was dismissed.

3. The learned counsel for the petitioner submits that the opinion of an expert is absolutely essential for a proper disposal of the case. Failure/refusal of the learned Magistrate to permit the petitioner to procure the necessary evidence results in failure/miscarriage of justice. In these circumstances, powers under Sec.482 of the Cr.P.C. may be invoked to set aside the impugned order, it is prayed.

4. I take note of the broad circumstance that on the face of it, notice of demand, though properly addressed and received, has not been replied to. I take note of the other circumstances referred to in the order passed by the learned Magistrate. The learned Magistrate has taken note of the fact that the petitioner appears to be a person who affixes his signatures differently in different documents.

5. I do not intend to express any final opinion on any such question. But I must note that the jurisdiction that I am called upon to invoke and exercise is the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. Such jurisdiction is not to be invoked as a matter of course. Satisfactory and compelling reasons must be shown to exist to justify the invocation of such powers. Even the mere fact that a subordinate court has erred on facts or in law is not by itself sufficient to justify the invocation of the extraordinary inherent jurisdiction. The law frowns upon the attempt to challenge the interlocutory orders during the pendency of the proceedings. This policy of law is reflected very clearly in the provisions of Sec.397(2) of the Cr.P.C. which proscribes revisional challenge against the interlocutory orders during the pendency of the proceedings. I do not find any such compelling reasons in this case which would justify the invocation of the jurisdiction under Sec.482 of the Cr.P.C.

6. In the result, this Crl.M.C. is dismissed. For the purpose of removing any doubts or to prevent any unintended

impression/message being conveyed, I make it clear that I have chosen only to hold that the impugned order does not warrant interference by invoking the jurisdiction under Sec.482 of the Cr.P.C. The petitioner shall be entitled to raise all his contentions before the learned Magistrate and also to challenge the impugned order before the appellate or revisional courts at a later stage of the proceedings, if such challenge is found to be necessary.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge